

No. 7718

United States
Circuit Court of Appeals
For the Ninth Circuit. 8

OSCAR S. LUND,

Appellant,

vs.

UNITED STATES OF AMERICA,

Appellee.

Transcript of Record.

Upon Appeal from the District Court of the United States for the
Southern District of California, Central Division.

FILED

DEC 27 1934

PAUL P. O'BRIEN,
Clerk

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original record are printed literally in italics; and, likewise, cancelled matter appearing in the original record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italics the two words between which the omission seems to occur.]

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Los Angeles, California.

UNITED STATES OF AMERICA, ss.

To United States of America and Peirson M. Hall as
United States Attorney for the Southern District
of California, Greeting:

You are hereby cited and admonished to be and appear at a United States Circuit Court of Appeals for the Ninth Circuit, to be held at the City of San Francisco, in the State of California, on the 17th day of August, A. D. 1934, pursuant to an order allowing appeal filed in the Clerk's Office of the District Court of the United States, in and for the Southern District of California, in that certain cause entitled United States of America plaintiff vs. Oscar S. Lund, defendant, No. 11768 H, and you are required to show cause, if any there be, why the judgment and sentence in the said cause mentioned, should not be corrected, and speedy justice should not be done to the parties in that behalf.

WITNESS, the Honorable Harry A. Hollzer, United States District Judge for the Southern District of California, this 19th day of July, A. D. 1934, and of the Independence of the United States, the one hundred and fifty nine.

Hollzer

U. S. District Judge for the Southern District of
California.

[Endorsed]: Rec'd copy this citation this 20th day of July 1934. Also rec'd copies of Assignments of Error, Order allowing appeal and petition for same, order fixing bond, order for exam. of sureties. Ernest R. Utley Asst. U. S. Atty. Filed Jul. 20, 1934. R. S. Zimmerman, Clerk By L. J. Somers, Deputy Clerk.

No. 11768-H

Filed.....

Viol: Section 32 Federal Penal Code (18 USC 76)
IN THE DISTRICT COURT OF THE UNITED
STATES IN AND FOR THE SOUTHERN
DISTRICT OF CALIFORNIA
CENTRAL DIVISION

At a stated term of said court, begun and holden at the City of Los Angeles, County of Los Angeles, within and for the Central Division of the Southern District of California on the second Monday of September in the year of our Lord one thousand nine hundred thirty-three:

The grand jurors for the United States of America, impaneled and sworn in the Central Division of the Southern District of California, and inquiring for the Southern District of California, upon their oath present:

That

OSCAR LUND,

hereinafter called the defendant, whose full and true name, other than as herein stated, is to the grand jurors unknown, late of the Central Division of the Southern District of California, heretofore, to-wit: on or about the 27th day of July, A. D. 1932, at San Pedro, County of Los Angeles, state, division and district aforesaid, and within the jurisdiction of the United States and of this Honorable Court did knowingly, wilfully, unlawfully and feloniously, and with intent to defraud certain persons, to-wit: Lawrence Davis and W. H. Davis, falsely assume and pretend to be an officer and employee of the United

States, acting under the authority of the United States, to-wit: a Federal Officer, and did then and there take upon himself to act as such officer in that he, the said defendant, served upon the said Lawrence Davis a purported search warrant and did search the premises of said Lawrence Davis located at 2322 South Grand Avenue, San Pedro, California, and did have in his possession and show to the said Lawrence Davis a badge bearing the letters "U S", when in truth and in fact, as he, the said defendant then and there well knew, he, the said defendant was not an agent and employee of the government of the United States and was not acting under the authority of the United States or any department thereof, and was not authorized by the United States, or any department thereof, to take upon himself to act as such officer and employee.

Contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States of America.

SECOND COUNT.

And the grand jurors aforesaid, upon their oath aforesaid, do further present:

That OSCAR LUND, hereinafter called the defendant, whose full and true name, other than as herein stated, is to the grand jurors unknown, late of the Central Division of the Southern District of California, heretofore, to-wit: on or about the 27th day of July, 1932, at San Pedro, County of Los Angeles, state, division and

district aforesaid, and within the jurisdiction of the United States and of this Honorable Court, did knowingly, wilfully, unlawfully and feloniously demand and obtain from a certain person, to-wit: one Lawrence Davis, a valuable thing, to-wit: merchandise consisting of twenty gallons of intoxicating liquor, the said defendant then and there pretending to the said Lawrence Davis that he, the said defendant, was an officer and employee of the United States, acting under the authority of the United States, to-wit: a Federal Officer, when in truth and in fact, as he, the said defendant, then and there well knew, he, the said defendant, was not an officer and employee of the government of the United States and was not acting under the authority of the United States or any department thereof, and was not authorized by any department of the government of the United States to hold himself out as such officer and employee, or to demand or obtain from the said Lawrence Davis the said merchandise;

Contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States of America.

PEIRSON M. HALL,
United States Attorney.

Wm. Fleet Palmer,
Assistant U. S. Attorney.

[Endorsed]: Filed Dec. 13, 1933. R. S. Zimmerman,
R. S. Zimmerman, Clerk.

At a stated term, to wit: The September Term, A. D. 1933, of the District Court of the United States of America, within and for the Central Division of the Southern District of California, held at the Court Room thereof, in the City of Los Angeles, on Monday the 22d day of January in the year of our Lord one thousand nine hundred and thirty-four.

Present:

The Honorable Harry A. Hollzer, District Judge.

UNITED STATES OF AMERICA,)	
)	
	)	Plaintiff,
)	
	)	No. 11,768-H,
vs.	)	Crim.
)	
OSCAR LUND,)	
)	
	)	Defendant

This cause coming on for arraignment and plea of defendant Oscar Lund, who is present in custody of the City authorities; J. J. Irwin, Assistant U. S. Attorney, appearing for the Government; H. C. Huntington, Esq., appearing for the defendant:

Defendant waives reading of the charges, states his true name to be as given therein, and enters his plea of Not Guilty; whereupon, H. C. Huntington, Esq., moves to reduce bail to \$2500, which motion is opposed by J. J. Irwin, Esq., and the cause is ordered continued for the Term for setting for trial. Later, at 2 o'clock p. m., defendant's motion to reduce bail is ordered denied without prejudice.

[TITLE OF COURT AND CAUSE.]

VERDICT.

We, the jury in the above-entitled cause, find the defendant, Oscar Lund guilty as charged in the 1st count of the Indictment, and guilty as charged in the 2d count of the Indictment.

Los Angeles, California, June 6th, 1934.

C. E. Magenheimer,
Foreman of The Jury.

[Endorsed]: Filed Jun. 6, 1934. R. S. Zimmerman,
Clerk, By M. R. Winchell, Deputy Clerk.

At a stated term, to wit: The February Term, A. D. 1934, of the District Court of the United States of America, within and for the Central Division of the Southern District of California, held at the Court Room thereof, in the City of Los Angeles, Calif., on Tuesday, the 10th day of July, in the year of our Lord one thousand nine hundred and thirty-four.

Present:

The Honorable HARRY A. HOLLZER, District Judge.

United States of America, Plaintiff,)

)

vs

) No. 11768-H-Crim.

)

Oscar Lund, Defendant.)

This cause coming on for sentence of Oscar Lund, the defendant herein, who is present in custody; J. J. Irwin, Assistant U. S. Attorney, appearing for the Government; H. C. Huntington and Ames Peterson, Esqs., appearing for the defendant: A. Peterson, Esq., presents motion in arrest of judgment, which is ordered filed; a statement of facts is made by Agent Bott; and the Court now pronounces sentence upon the defendant for the crime of

which he stands convicted, viz: violation of Section 32 of the Federal Penal Code, and

Upon count one it is the judgment of the Court that the defendant be confined in the United States Penitentiary, McNeil Island, Wash., for the term of thirty (30) months; and with respect to count two, that the defendant be placed on probation for a period of five years, beginning with the date of defendant's release after serving sentence pronounced with respect to count one; and the term is extended for the period of probation.

The conditions of probation are that the defendant, in addition to obeying the laws of the land, shall refrain from handling narcotics, shall refrain from associating with persons known to deal in narcotics, and otherwise comply with such instructions as the Probation Officer may prescribe. It is ordered that this case be placed on the calendar of July 20th, 1934 for hearing on defendant's oral motion to set aside order allowing probation.

(Testimony of W. H. Davis)

IN THE UNITED STATES CIRCUIT COURT OF
APPEALS FOR THE NINTH CIRCUIT.

UNITED STATES OF AMERICA,)	No. 11768-H
	Plaintiff,)
	PROPOSED
	BILL OF
vs.)	EXCEPTIONS
	OF
OSCAR S. LUND,)	DEFENDANT
	OSCAR S.
Defendant.)	LUND

BE IT REMEMBERED that an indictment was returned in the above entitled cause on the 13 day of December, 1933, and that thereafter, and on the 15th day of June, 1934, said cause came on regularly for trial on the issues raised by said indictment and the plea, not guilty thereto by the defendant, before the Honorable Harry A. Hollzer, judge presiding, sitting with a jury, the United States of America being represented by Assistant United States Attorney J. J. Irwin and the defendant being represented by his attorney Henry Huntington; and thereupon the following proceedings were had:

W. H. DAVIS:

Called as a witness on behalf of the Government, being first duly sworn, testified as follows:

I am a carpenter and reside in San Pedro. I don't remember ever having seen Oscar Lund before, (the de-

(Testimony of W. H. Davis)

fendant). Something unusual occurred on the night of July 27, 1932. Two dark complexioned men, one about 6 feet 1 or 2 and the other perhaps 5 feet 10 or 11 came to a small room in back of our house. My son was in this small room, which was rented by a boot-legger at the time and my son and I were driving for this man. My son is Lawrence Davis. When I entered the room, the first man that I met caught me by the shoulder and told me to sit down. I asked him what it was about. He pulled his coat open and presented something that looked like a badge and said, "sit down". I figured that I didn't have to sit down and the man pushed me down on the bed and talked to my son. There are two little rooms in this place. I started to get up to get to the other room. It was the shorter man that pushed me down on my bed. I started to talking to the tall man and ask him what it was all about and he told me that he was searching the place.

MR. IRWIN:

Appearing as counsel for the prosecution made the following statement:

Q. Did he tell you what the paper was?

A. He said, "This is all you want to see."

Q. Then, after you looked at it, you had a further conversation with him about that paper?

A. I asked to see it later on, again.

Q. You had a further conversation about it at that time?

MR. BOTT:

Agent for the Department of Justice being present, the following occurred.

(Testimony of Lawrence Davis)

THE COURT: Do you recognize Mr. Bott, the Government Agent, who is now sitting in the Court room?

WITNESS: Yes, sir. I had a conversation with him on or about August 2, 1932. He said he was connected with the Federal Government. He asked me what took place on the evening of July 27th. I went with him to the police station. I identified someone and told Mr. Bott I thought that person was the man. I identified him as being the shorter man. I have not seen that person whom I identified here today. The name of Lund was mentioned when I talked to Mr. Bott. I identified him as the man who grabbed hold of me that night. I have not seen either of the two men who are now present, before. That is to say I do not remember them. I remember talking to you (Mr. Irwin) on the 31st of May of this year. I did not tell you that Mr. Lund was the man who accosted me on the 27th of July. I did not tell you that I could identify Mr. Lund.

WHEREUPON the deposition of

LAWRENCE DAVIS

taken by stipulation was read into evidence: The said Lawrence Davis having been first duly sworn.

My name is Lawrence Davis and I was living at number 2322 South Grand Ave. in San Pedro, on the 27th of July, 1932. I saw Oscar Lund for the first time on that date. My father was with me. I drove into the alley and saw him in the back yard. He said, "you are the man that I want." I asked him what he wanted. He flashed a badge on me. It looked like a gold badge with a silver top and the letters "U. S." on top of it. He

(Testimony of W. H. Davis)

showed me a paper. I looked at it. He did not give it to me. He said that was the evidence and said that I had sold a couple of pints of liquor to a person named Hanson. He showed me this paper and said he was going to search the house. He did not search it. About that time my father came in and this conversation was in his presence. I think he showed my father the paper he had. I saw Mr. Lund again at the police station.

CROSS EXAMINATION

BY MR. HUNTINGTON:

The tall fellow had a gray suit on. The man that showed me a badge weighed about 175 or 180 pounds. He was dark, sort of tanned, just ordinary I guess. I think he had on a dark suit. I remember Mr. Lund from having seen him at the County Jail.

WHEREUPON the witness

W. H. DAVIS

was re-called to the witness stand.

WITNESS: There was an appointment made to meet these two gentlemen again. I was with the tall man. I don't remember telling Mr. Bott that I knew the name of either one of the men who accosted me. I did identify the smaller man at the jail afterward. That night when those people were at my place I said, "you fellows have the authority to search this place," and I told them that I was not going to run away, and one of them said, "you would not get very far if you did". I said to the tall man, "isn't there some way out of this"? And he said, "talk to the other man." So I called him to one side and asked him the same question and he gave me

(Testimony of W. H. Davis)

no satisfaction and so I went back to the tall man who asked me how much money I had. I told him I might be able to raise \$100.00. He told me I would have to raise \$500.00.

QUESTION BY THE COURT:

Did one of the men show you a badge?

WITNESS: Yes, he showed me a badge. I did not see the letters upon it. I remember telling the agent Bott that these persons said they were federal officers. That statement was made on July 27, 1932. It is a fact that on July 30th, I identified Mr. Lund as being one of the persons who called at my home but, it was not he with whom I engaged in conversation about the payment of money. It is a fact that Mr. Lund showed me a badge and stated that he and the man with him were federal officers. It is also a fact that on that occasion, that is to say, on July 27, 1932, those men took 20 gallons of liquor away from me. It is not true that Lund commanded his partner to take my son into an adjoining room. It is not true that Lund said to me that there were 4 of us or ask me how much money we had. I did tell however, one of the men, that I did not have any money but that I might rake up \$50.00 in the morning. It is not true that I promised to give Lund any money. All of my conversation was with the tall man. Mr. Lund is not the man that I talked with concerning money. I don't know now whether it was Lund to whom I talked concerning money. At the time I gave my statement I had things twisted up. At the time I gave the statement I wasn't sure whether he was the man or not. It is true that one of the two men who were in my rear room

(Testimony of T. V. Rawson)

grabbed me by the shoulder, showed me a badge and stated that he and the man with him were federal officers. And one of them removed about 20 gallons of liquor to a car that was waiting in the alley. It is true that I said that I might be able to get the \$50.00 in the morning and one of them said "what's \$50.00 among 4 of us. You get \$100.00 and I will call you and meet you alone the next day. I am not saying when". It is true that on July 30th, 1932, I pointed out the defendant, Lund, as being one of those men who were there. But it was not Lund that I had any conversation with concerning money.

CROSS EXAMINATION

I told the officer who interviewed me that I was a bootlegger but they did not arrest me. There were 5 or 6 officers present when I was interviewed. The officers showed me a picture of a man and said they did not know his name but they would go out and get him. I saw the badge that one of the men had on only once. I could not distinguish any writing upon it.

T. V. RAWSON,

being called as a witness on behalf of the Government, being first duly sworn, testified as follows:

I am a police officer in the City of Los Angeles. I recall seeing the witness William H. Davis before. Davis and his son both identified the defendant, Lund as the man that came down to their place in San Pedro.

(Testimony of W. M. Blott—R. A. Sears)

W. M. BOTT,

called as a witness on behalf of the Government and being first duly sworn, testified as follows:

I am a special agent of the United States Department of Justice, and I know the witness W. H. Davis. I had a conversation with him about the 1st day of August, 1932. He told me he wanted to make a complaint. He told me that after the liquor was placed in the car in the alley that Mr. Lund told his partner to go into the adjoining room and that then Mr. Lund said to him "we don't do things this way, but owing to the fact that you have a mother and baby in the house, how much money have you got on you—how much money can you raise?" And that Davis said he could possibly raise \$50.00 and that Lund told him he would have to raise \$100.00. I had a conversation with the witness Davis on the 31st of May of this year and he told me that Oscar Lund was the man that came to his house. I also heard Mr. Davis state to Mr. Irwin, the Government prosecutor that Mr. Lund was the man who demanded money on the night of July 27, 1932.

R. A. SEARS,

called as a witness in behalf of the government and being first duly sworn, testified as follows:

That I am a police officer of the City of Los Angeles. I met the witness, Davis, the latter part of July, 1932. He complained to me about being high-jacked out of some liquor. I showed him a book with some pictures in it and he identified Lund as being the person who came to his

(Testimony of Clara Lund—Oscar Lund)

house. The witness Davis said that he was positive that Lund was the man who came to his house and represented himself as being a federal officer. The man identified by the witness, Davis is the defendant Lund, sitting here in the court room.

WHEREUPON counsel for the defendant Oscar Lund requested that the Court direct the jury to return a verdict in favor of said defendant, which motion was by the Court denied and an exception noted.

CLARA LUND,

being called as a witness on behalf of defendant and having been first duly sworn testified as follows:

I am the common law wife of Oscar Lund. I have lived with him for seven (7) years and I recall the night of July 27, 1932. My husband was home all day and he was home all evening, I am positive of that. He was arrested 2 or 3 days afterwards. I didn't see him the night he was arrested.

OSCAR LUND,

being called as a witness in his own behalf and having been duly sworn testified as follows:

The photograph which you showed me is my picture. I don't know when it was taken. When I was arrested I was booked on suspicion of robbery. I never saw Mr. W. H. Davis before. I did not visit a place in San Pedro, located on number 2322 South Grand Ave., on the 27th of July, 1932; nor did I visit any place on that evening in San Pedro; nor did I represent myself to be a federal officer at that time; nor did I exhibit a pur-

(Testimony of Oscar Lund)

ported search warrant; nor did I demand or obtain any money from anybody on that date; nor did I demand or obtain any intoxicating liquor from anyone. As a matter of fact I was home on the evening of July 27, 1932. I believe on the 27th of July, 1932 I was in jail. And on the 24th of July, 1932 I was in Malibu Beach. I think I was down there two weeks. I don't know what day I went down to Malibu Beach. I got back 4 or 5 days before I was arrested.

Whereupon the jury was instructed upon the law, relative to said cause by the court and there being no exception noted either by counsel for the Government or counsel for the defendant, the bailiff was sworn to take charge of the jury and the jury retired to deliberate, then 2:55 o'clock P. M.

Whereupon the following occurred:

THE COURT: Now that the jury has retired, and addressing ourselves to the witness W. H. Davis—Mr. Davis, will you come forward?

(Whereupon the witness W. H. Davis came forward as requested.)

THE COURT: The Court received a communication to the effect that you desired to make some statement. That communication came to us after the evidence had been concluded and the argument had been partially completed. Accordingly, the Court could not permit you to make your statement in the presence of the jury.

If you desire to make a statement at this time, that privilege will be accorded to you.

MR. DAVIS: I do.

THE COURT: Very well.

You understand, of course, that you are not obliged to make any statement, and that any statement made by you, if it should be in any way against your interest or in any way incriminating, or involving you in any way, of course, it is one you are not required to make, and if made, of course, could be used against you in any future proceedings.

With that admonition, should you still desire to make a statement, you may do so.

MR. DAVIS: I do, your Honor.

THE COURT: Very well.

MR. DAVIS: Do I need to take the stand?

THE COURT: No, you can make it from right there.

MR. DAVIS: Well, I wish to state that this being my first time on the witness stand, and in court, I didn't understand everything, that is, that went on in court, and when the questions were put to me, quite a few of the questions, I answered them as I figured that I should, in my own mind, and when Mr. Irwin asked me the questions in regard to talking to him and Mr. Bott out in the—well, out in the hallway, I guess as you call it—and I think the question he put to me was in this way: He asked me, he said that in refreshing my mind, that he and Mr. Bott asked me if the man inside the court room was the man, Mr. Lund. That question—the reason I answered it as I did, I didn't remember the question being put to me in that exact form. I thought they asked me the question if I could identify the man, Mr. Lund, in this case.

And when I took the stand to identify him, I was asked the question if I could identify this Mr. Lund, in this case. Although the man may be Mr. Lund—I want to make it clear to the Court, simply this: This man may be Mr. Lund, but that I wasn't positive in my identification only. He didn't seem to look like the man that held us up at the time. That was the only thing that I—only conclusion that I had. It may be the man, but I wasn't positive that it was the man, because he simply didn't look like the man that held me up that night, because the man that held me up that night was a man quite a lot heavier than this man, also a man that had—I am not certain, but quite sure—glasses on, and a hat on at the time.

Of course, I picked this man's picture out at the police station as being the man that looked like the man that held me up. The books were laid open. The police officers made a statement that the books were handed to us and we were told to go through them and look through them. That, as I remember, is incorrect. The books were laid down, three books, as I remember it and opened up. And at that time one of the officers pointed to a certain picture in one of these books—I don't remember the officer—and says, "Does that look like the man?" And I said, "Yes, it does."

We went through the rest of the books, looked through two or three of the books, to see if there was anything else that looked like the man. There was no other picture that looked as much like the man that held us up as this one that we had picked out that had been shown to us.

We went up in the shadow box there, and a man was marched, with three or four other men, into the shadow box. And he corresponded to the picture we had picked out and looked like the man that held us up.

I didn't want to commit myself that that positively was the man. He looked like the man, and I don't remember of making the statement at any time during the entire discoursesment of the case as being positive that that man was the man, but he looked like the man that held us up.

And that is the reason that I spoke as I did when asked that question by Mr. Irwin in regard to this Mr. Lund being the man. I wasn't sure of it. He looked like the man.

THE COURT: Who looked like the man?

MR. DAVIS: This man sitting right here.

THE COURT: You mean Mr. Lund, the defendant?

Mr. Davis: Yes.

THE COURT: Was there something you wanted to add?

MR. DAVIS: Well, there is only one thing that I may add. My wife is here in the court room, and I have been talking to her since she come up here.

I asked her at the time we were talking if this gentleman that they called Oscar Lund, if she thought he was the man that held us up, because my wife was present all the time in this room. She was marched in there by one of the men.

MR. IRWIN (Interrupting): I wonder if the witness Davis would care to be put under oath while making this statement?

THE COURT: No, let him continue making the statement.

MR. DAVIS: I talked to her and she said, "I want you home and you must tell the truth."

"Well," I said, "you under the same circumstances would tell the truth."

"Now," I asked her, "did you see any one in the court room that looked like the man that held us up?"

"No," she said, "I didn't."

"Well," I said, "if you was to take the stand could you identify the man in the courtroom called Oscar Lund as being the man that held us up?"

She said, "No, I couldn't because the man that held us up was quite a lot larger than that man." "And if I remember right," she said, "I think he wore a brown suit, a panama hat and had glasses on."

"Well, then," I said, "under the same circumstances that I am placed under I answered the same as you would, it looked like the man, but I am not positive that he is the man."

And my wife saw the man, this man especially, more than I did, because she sat on the bed during the entire proceedings of this case while I was back and forth in the rooms.

THE COURT: Does that conclude the statement you wish to make?

MR. DAVIS: Well, I am told I am held here to—to be held under perjury. I don't understand this perjury. I have never had that experience. This is my

first time on the witness stand in my life, and I don't understand how it is that I am held on perjury after trying to be honest with every one concerned. And I wish to have that made clear to me.

If I have done anything that isn't in accordance with the Court, and being dishonest, I wish to try and remedy it. I have no desire to do so.

THE COURT: Do we understand that some charge has been filed against this man?

MR. IRWIN: It has already been filed. I understand that when the witness leaves the courtroom he will be served with a warrant in connection with the existing complaint which has been presented to the Grand Jury, but will probably be returned, and in the meanwhile a Commissioner's complaint has been sworn to, and bond has been fixed, so I think at this time I can move your Honor to rescind the order of detention of that witness as a material witness.

THE COURT: Yes. The evidence having been concluded the order of detention of Mr. W. H. Davis as a witness is vacated.

MR. HUNTINGTON: May I address the Court? I was wondering, Your Honor, in view of that statement, if it would not be in order that I move the court to declare a mistrial in this case.

THE COURT: A mistrial on what ground?

MR. HUNTINGTON: On the ground of the misunderstanding of the witness of certain questions; on the

ground that his testimony obviously puts me at a terrible disadvantage. The entire conduct of the witness was such that I couldn't comment on his evidence very strongly. And that there are new matters, by way of evidence, that has appeared here that, of course, has taken the defendant entirely by surprise, the intimation of the additional witness present.

And I believe in all fairness that the jury should be informed of that fact.

THE COURT: Well, it would seem to us that that is a matter in which the Government has suffered and not the defendant. But at best it wouldn't be any ground for a mistrial.

Do I understand you are now making a motion for a mistrial?

MR. HUNTINGTON: Yes, I have made that in the form of a motion.

THE COURT: That motion is denied.

MR. HUNTINGTON: Exception, please.

WHEREUPON, the last quoted testimony was not read to the jury and thereafter the jury returned with a verdict of guilty on both counts.

THEREAFTER, and upon the 10th day of July, 1934, and before the pronouncement of judgment by the Court on said defendant, the following motion in arrest of judgment was filed:

IN THE DISTRICT COURT OF THE UNITED
STATES IN AND FOR THE SOUTHERN
DISTRICT OF CALIFORNIA
CENTRAL DIVISION

UNITED STATES OF AMERICA,)

Plaintiff,)

No. 11768-H

vs.)

Criminal.

OSCAR S. LUND,)

MOTION

Defendant.)

Comes now the above named defendant and moves the Court in arrest of the judgment this date pronounced in the above entitled cause, upon the ground and for the reason that said Court was without jurisdiction or power to sentence said defendant to any term in excess of three (3) years because the evidence conclusively shows but one offense was committed; that the offense charged in each count of the indictment is identical; and that there was been an attempt made to carve two offenses out of the same state of facts.

DATED: July 10th, 1934.

AMES PETERSON

Attorney for Defendant.

Which said motion was thereafter by the Court denied and an exception allowed to the defendant.

IN THE DISTRICT COURT OF THE UNITED
STATES IN AND FOR THE SOUTHERN
DISTRICT OF CALIFORNIA
CENTRAL DIVISION.

UNITED STATES OF AMERICA,	)	NO. 11,768-H Criminal
)	
)	
Plaintiff,	)	ORDER
	)	EXTENDING TIME
vs.	)	FOR FILING
	)	PROPOSED
OSCAR S. LUND,	)	BILL OF
	)	EXCEPTIONS
Defendant.)	

Good cause appearing therefor, it is stipulated between the undersigned that the time for filing the proposed bill of exceptions by the defendant and appellant in the above entitled cause be, and the same is hereby, extended to and including AUGUST 20th, 1934.

DATED: July 19th, 1934.

PEIRSON M. HALL,
United States Attorney

By J. J. Irwin
Assistant United States Attorney

AMES PETERSON
Ames Peterson

Attorney for Defendant and Appellant.

IT IS SO ORDERED

Hollzer

Judge.

IN THE DISTRICT COURT OF THE UNITED
STATES IN AND FOR THE SOUTHERN
DISTRICT OF CALIFORNIA
CENTRAL DIVISION.

UNITED STATES OF	)	No. 11768-H
AMERICA,	)	Criminal
)	
Plaintiff,	)	ORDER
	)	EXTENDING
vs.	)	TIME FOR FILING
	)	PROPOSED BILL
OSCAR S. LUND,	)	OF EXCEPTIONS
	)	and ORDER.
Defendant.)	

Good cause appearing therefor, it is stipulated between the undersigned that the time for filing the proposed bill of exceptions by the defendant and appellant in the above entitled cause be, and the same is hereby, extended to and including the 20th day of September, 1934.

DATED: AUGUST 8th, 1934.

It is further ordered that the term of court be extended to that date.

PEIRSON M. HALL,

United States Attorney

By Ernest R. Utley

Assistant United States Attorney

AMES PETERSON

AMES PETERSON,

Attorney for Defendant and Appellant.

IT IS SO ORDERED.

Hollzer

JUDGE

UNITED STATES OF)	
AMERICA,)	
)	
	)	Plaintiff,
	)	STIPULATION
	)	AND ORDER
OSCAR S. LUND,)	
)	
	)	Defendant.

IT IS HEREBY STIPULATED by and between the plaintiff and the defendant Oscar S. Lund, by and through their respective counsel, that the time in which to serve and file a Bill of Exceptions on appeal in the above entitled cause may be extended to the 25th day of October, 1934.

DATED this 15th day of September, 1934.

PIERSON M. HALL
 United States Attorney
 J. J. Irwin
 Assistant U. S. Attorney
 AMES PETERSON
 Ames Peterson

Attorney for Defendant Oscar S. Lund.

GOOD CAUSE APPEARING THEREFOR, IT IS HEREBY ORDERED that the time within which the Bill of Exceptions in the above entitled cause may be filed and settled be, and the same is hereby extended to the 25th day of October, 1934, and the term of court is extended also to that date.

DATED this 15th day of September, 1934.

Hollzer
 United States District Judge

UNITED STATES OF)	
AMERICA,)	
	)	No. 11768-H
	)	Criminal
Plaintiff,	)	STIPULATION
	)	AND ORDER
vs.)	
)	
OSCAR S. LUND,)	
Defendant.)	

IT IS HEREBY STIPULATED by and between the plaintiff and the defendant OSCAR S. LUND, by and through their respective counsel, that the time in which to serve and file a Bill of Exceptions on appeal in the above entitled cause may be extended to the 25th day of November, 1934.

DATED this 12th day of October, 1934.

PIERSON M. HALL

United States Attorney

By J. J. Irwin

Assistant U. S. Attorney

AMES PETERSON

Ames Peterson

Attorney for Defendant OSCAR S. LUND.

GOOD CAUSE APPEARING THEREFOR, IT IS HEREBY ORDERED that the time within which the Bill of Exceptions in the above entitled cause may be filed and settled be, and the same is hereby extended to the 25th day of November, 1934, and the term of court is extended also to that date.

DATED this 12th day of October, 1934.

Hollzer

United States District Judge

UNITED STATES OF)	
)	
AMERICA,)	
	)	No. 11768-H
	)	Criminal
Plaintiff	)	STIPULATION
	)	AND ORDER
vs.)	
)	
OSCAR S. LUND,)	
)	
Defendant)	

IT IS HEREBY STIPULATED by and between the plaintiff and the defendant, OSCAR S. LUND, by and through their respective counsel, that the time in which to serve and file a Bill of Exceptions on appeal in the above entitled cause may be extended to the 15th day of December, 1934.

Dated this 15th day of November, 1934.
 Pierson M. Hall,
 United States Attorney
 By J. J. Irwin
 Assistant U. S. Attorney.
 AMES PETERSON
 Ames Peterson
 Attorney for Defendant OSCAR S. LUND.

GOOD CAUSE APPEARING THEREFOR, IT IS HEREBY ORDERED that the time within which the Bill of Exceptions in the above entitled cause may be filed and settled be, and the same is hereby extended to the 15th day of December, 1934, and the term of court is extended also to that date.

Dated this 15th day of November, 1934.
 Hollzer
 United States District Judge.

IN THE DISTRICT COURT OF THE UNITED STATES IN AND FOR THE SOUTHERN DISTRICT OF CALIFORNIA
CENTRAL DIVISION

UNITED STATES OF)	
AMERICA,)	
	)	No. 11768-H
Plaintiff,	)	Criminal
)	
vs.	)	STIPULATION and
	)	ORDER
OSCAR S. LUND,)	
)	
Defendant.)	

IT IS HEREBY STIPULATED by and between the plaintiff and defendant, by and through their respective counsel, that the time within which defendant is to file the record and docket in the above entitled cause in the Circuit Court of Appeals for the Ninth Circuit may be extended to and including the 24th day of December, 1934.

DATED: December 10th, 1934.

PIERSON M. HALL
United States Attorney.

By.....
Assistant United States Attorney

AMES PETERSON

Ames Peterson,
Attorney for Defendant and Appellant.

Good cause appearing therefor, IT IS HEREBY ORDERED that the time within which the defendant is to file the record and docket in the above entitled cause in the Circuit Court of Appeals for the Ninth Circuit be and the same is hereby extended to and including the 24th day of December, 1934.

DATED: This day of December, 1934.

United States District Judge.

IN THE UNITED STATES CIRCUIT COURT OF
APPEALS FOR THE NINTH CIRCUIT

UNITED STATES OF)	
AMERICA,)	
)	
Plaintiff and Appellee	)	No. 11768-H
)	
vs.	)	STIPULATION
)	
OSCAR S. LUND,)	
)	
Defendant and Appellant)	

IT IS STIPULATED by and between the counsel for the appellee and counsel for the appellant that the foregoing proposed bill of exceptions contains the correct statement of the evidence at said trial and of the orders incorporated in said bill, and that the same may be settled, allowed, and approved as constituting the bill of exceptions in this cause.

DATED: December 11th, 1934.

PIERSON M. HALL,
United States Attorney,
By J. J. Irwin
Assistant United States Attorney

Ames Peterson
Ames Peterson

Attorney for Defendant and Appellant.

IN THE UNITED STATES CIRCUIT COURT OF
APPEALS FOR THE NINTH CIRCUIT

UNITED STATES OF)	
AMERICA,	)	No. 11768-H
)	
Plaintiff and Appellee	)	ORDER
	)	ALLOWING,
vs.	)	SETTLING AND
	)	APPROVING BILL
OSCAR S. LUND,	)	OF EXCEPTIONS.
)	
Defendant and Appellant)	

THE FOREGOING BILL OF EXCEPTIONS is settled, allowed, and approved as the Bill of Exceptions in said cause, and it is hereby certified that said Bill has been presented, signed and filed within the time and term prescribed by law.

DATED: December 11th, 1934.

Hollzer
Judge

[Endorsed]: Filed Dec 12 1934 R. S. Zimmerman,
Clerk By Thomas Madden Deputy Clerk.

IN THE DISTRICT COURT OF THE UNITED
STATES IN AND FOR THE SOUTHERN
DISTRICT OF CALIFORNIA
CENTRAL DIVISION.

UNITED STATES OF AMERICA,)	No. 11,768-H
	Criminal.
Plaintiff,)	
	PETITION
vs.)	FOR APPEAL
	AND FOR
OSCAR S. LUND,)	ORDER FIX-
	ING AMOUNT
Defendant.)	OF BOND.

Comes now OSCAR S. LUND, and feeling himself aggrieved by the final decree and judgment of the court entered on the 10 day of July, A. D., 1934, hereby prays that an appeal may be allowed to him from said judgment to the United States Circuit Court of Appeals for the Ninth Circuit, and, in connection with this petition, that an appeal may be allowed to him from said judgment to the United States Circuit Court of Appeals for the Ninth Circuit, and, in connection with this petition, petitioner herewith presents his assignment of errors.

Petitioner further prays that an order of supersedeas may be entered herein pending the final disposition of the cause and that the amount of security may be fixed by

the order allowing this appeal, and a proper transcript of the record of proceedings and papers upon which said judgment was made, duly authenticated, shall be transmitted to the United States Circuit Court of Appeals for the Ninth Circuit.

Ames Peterson

Attorney for Appellant OSCAR S. LUND.

[Endorsed]: Filed Jul. 19, 1934. R. S. Zimmerman,
Clerk By Louis J. Somers, Deputy Clerk.

[TITLE OF COURT AND CAUSE.]

ASSIGNMENT OF ERRORS.

Comes now the appellant, OSCAR S. LUND, and in connection with his appeal in this proceeding, says that, in the record, proceedings, and the final judgment therein, manifest error has intervened, to the prejudice of the appellant, to-wit:

I.

That the Court erred in permitting additional evidence or statements of the witness W. H. DAVIS after said cause had been submitted to the jury and before the jury had returned its verdict.

II.

That the Court erred in permitting the attempted impeachment of the witness W. H. DAVIS by Government Counsel.

III.

That the Court erred in permitting to be allowed in evidence statements of the witness W. H. DAVIS made outside of the presence of the defendant.

IV.

That the Court erred in permitting Government Counsel to examine the witness W. H. DAVIS relative to that certain written statement marked in this cause as "Government's Exhibit No. 2" for identification.

DATED: July 16th, 1934.

Ames Peterson

Henry Huntington

Attorneys for Defendant OSCAR S. LUND.

[Endorsed]: Filed Jul. 19, 1934. R. S. Zimmerman
Clerk By Louis J. Somers Deputy Clerk.

[TITLE OF COURT AND CAUSE.]

AMENDMENT TO ASSIGNMENT OF ERRORS

COMES NOW the above named appellant and with leave of Court first had and obtained, files this, an amendment to the Assignment of Errors, heretofore filed, and states that the Court erred to his prejudice in denying his Motion in arrest of judgment by imposing sentence upon the second count, by reason of the fact that there is but one offense set forth in said indictment and that the evidence introduced tended to prove the commission of but one offense.

DATED: December 11th, 1934.

Ames Peterson

Attorney for Appellant.

[Endorsed]: Filed Dec. 11, 1934 R. S. Zimmerman,
Clerk By Thomas Madden, Deputy Clerk.

[TITLE OF COURT AND CAUSE.]

ORDER ALLOWING APPEAL AND FIXING
AMOUNT OF APPEAL BOND.

Appeal to the United States Circuit Court of *Appeal* for the Ninth Circuit is allowed, and petition for appeal approved, upon giving of bond as required by law, in the sum of SEVENTY-FIVE HUNDRED (\$7500.00) DOLLARS.

DATED: July 17, 1934.

Hollzer

Judge of said court.

[Endorsed]: Filed Jul. 19, 1934 R. S. Zimmerman,
Clerk By Louis J. Somers, Deputy Clerk.

[TITLE OF COURT AND CAUSE.]

PRAECIPE.

TO R. S. ZIMMERMAN, CLERK OF THE ABOVE
ENTITLED COURT:

Sir:

Please issue and certify for the defendant, OSCAR S. LUND, in the above entitled cause, as appellant upon appeal to the United States Court of *Appeal* for the Ninth Judicial District of the United States of America, a transcript of the record of the above entitled cause, and include therein the following:

1. Indictment.
2. Plea of the defendant thereto.
3. Bill of Exceptions.
4. Petition for Appeal.
5. Order allowing appeal and fixing bond.
6. Citation.
7. The stipulations on preparation and docketing the record on appeal.
8. Assignments of Errors and amendment thereto.
9. The verdict.
10. The sentence and judgment.
11. This praecipe.

Dated December 11th 1934

Ames Peterson

Attorney for Defendant and Appellant.

[Endorsed]: Received copy of the within this 15th day of December, 1934. Peirson M. Hall, D. H. attorney for plff. Filed Dec. 15 1934 R. S. Zimmerman, Clerk By Edmund L. Smith, Deputy Clerk.

[TITLE OF COURT AND CAUSE.]

CLERK'S CERTIFICATE.

I, R. S. Zimmerman, clerk of the United States District Court for the Southern District of California, do hereby certify the foregoing volume containing 39 pages, numbered from 1 to 39 inclusive, to be the Transcript of Record on Appeal in the above entitled cause, as printed by the appellant, and presented to me for comparison and certification, and that the same has been compared and corrected by me and contains a full, true and correct copy of the citation; indictment; minute order of January 22, 1934 entering plea of not guilty; verdict; sentence; bill of exceptions; petition for appeal; assignment of errors; amendment to assignment of errors; order allowing appeal and praecipe.

I DO FURTHER CERTIFY that the amount paid for printing the foregoing record on appeal is \$ and that said amount has been paid the printer by the appellant herein and a receipted bill is herewith enclosed, also that the fees of the Clerk for comparing, correcting and certifying the foregoing Record on Appeal amount to and that said amount has been paid me by the appellant herein.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the Seal of the District Court of the United States of America, in and for the Southern District of California, Central Division, this day of December, in the year of Our Lord One Thousand Nine Hundred and Thirty-four and of our Independence the One Hundred and Fifty-ninth.

R. S. ZIMMERMAN,

Clerk of the District Court of
United States of America, in
and for the Southern District
of California.

By

Deputy.